Supreme Court, U.S.
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No. 02-948

IN THE

Supreme Court of the United States

JEFFERSON RANDOLPH CORPORATION d/b/a
JRC TRUCKING, INC. and THURMAN CARPETS, INC.,

Petitioners,

v.

PROGRESSIVE DATA SYSTEMS, INC.;
WILLIAM A.CROZIER and THOMAS G. TRAYLOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Neither Petitioner has a parent company and no publicly held company owns 10% or more of the stock of either Petitioner.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

1. The Supreme Court Of Georgia Accepted Certiorari In This Case In Order To Decide "Whether A Reviewing Court May Properly Vacate An Arbitration Award Due To The Arbitrator's Manifest Disregard Of The Law," And By Its Order Did Not Expressly Accept The Case In Order To Decide A Question Of Georgia State Law.

The Supreme Court of Georgia granted Respondents' petition for certiorari below in order to consider:

> Whether a reviewing court may properly vacate an arbitration award due to the arbitrator's manifest disregard of the law. *See Greene v. Hundley*, 266 Ga. 592 (1996); *City of Demorest v. City of Baldwin*, 251 Ga. App. (2001); *Conmac Corp. v. Southern Diversified Development, Inc.*, 245 Ga. App. 895 (2000).

(Order Of The Supreme Court Of Georgia Granting Certiorari, cited in the Brief Of Respondents, p. 4)

Thus, the Supreme Court of Georgia neither limited the scope of its review to state law issues nor did it exclude from consideration matters giving rise to a substantial federal question.

Petitioners respectfully submit that the Supreme Court of Georgia formulated its grant of certiorari in the manner that it did in light of Petitioners' argument before the Georgia Court of Appeals that the doctrine of "manifest disregard of the law" represented a valid basis for judicial review under *both* the Georgia Arbitration Code ("GAC"), O.C.G.A. § 9-9-1, *et seq.*, and the Federal Arbitration Act ("FAA"), Title 9 U.S.C. § 1, *et seq.* The Court of Appeals ruled it need not decide which

statutory scheme actually governed since it concluded "Georgia courts will not confirm an arbitration award that constitutes a manifest disregard of law applicable under the Federal Arbitration Act." (*See* Opinion Of The Court Of Appeals Of Georgia, Petitioners' Petition, Appendix C, p. 21a; *Jefferson Randolph Corp. v. Progressive Data Systems*, 251 Ga. App. 1 (553 S.E.2d 304 (2001)).

When the case subsequently reached the Supreme Court of Georgia, that Court sought to decide whether "a reviewing court may properly vacate an arbitration award due to the arbitrator's manifest disregard of the law." (Order Of The Supreme Court Of Granting Certiorari, cited in the Brief Of Respondents, p. 4). That Court also knew that neither the Georgia Arbitration Code nor the Federal Arbitration Act explicitly referenced the principle in question.

That the Supreme Court of Georgia proceeded to answer its question in the negative, and to opine that "the principle [of manifest disregard of the law] is widely recognized as being nothing more than a non-statutory creation of the federal courts," demonstrates that a majority of the Court viewed the rule most skeptically. (Petitioners' Petition, Appendix B, p. 5a). It duly noted that the Georgia Arbitration Code did not at any place explicitly announce "manifest disregard of the law" as an operative standard of review, and it also observed that the statutory language of the Federal Arbitration Act was also silent on the matter. *Id.*

Thus, Petitioners respectfully submit that a substantial federal question is in fact presented, and this Court should grant certiorari to decide it. Since federal court jurists are unanimous in their determination to uphold "manifest disregard of the law" as a proper standard of judicial review in arbitration cases, the decision of some state court jurists to ignore that same principle when circumstances otherwise demand its application should not escape this Court's review.

2. The Decision Of *Southwire Co. v. American Arbitration Association* Was In No Manner Applicable To Or Legal Dispositive Of The Instant Case.

In the case of *Southwire Co. v. American Arbitration Association*, 248 Ga. App. 226 (545 S.E.2d 681) (2001), the Georgia Court of Appeals concluded that the Georgia Arbitration Code applies if a contract has a Georgia choice of law clause. Respondents argued to the Georgia appellate courts that the *Southwire* case was applicable here. (*See* Brief Of Respondents, p. 4)

Respondents' assertion notwithstanding, there is no Georgia choice of law clause in the contract at issue here. (Petitioners' Lodging, L-1 through L-8). Thus, this case was never considered binding by either the Court of Appeals or the Supreme Court of Georgia.

3. Petitioners Have Argued The Applicability Of The Federal Arbitration Act, And Its Recognized Principle Of "Manifest Disregard Of The Law," Before Each And Every Court They Have Litigated In This Action.

In their Application To Vacate the Arbitrator's Award, filed before the Superior Court of Gwinnett County, Georgia, in their appeal to the Court of Appeals of Georgia, and in their briefs before the Supreme Court of Georgia, Petitioners have repeatedly argued that application of the Federal Arbitration Act in this case would assure application of the "manifest disregard of the law" principle. While Respondents assert that "Petitioners did not draw in question the validity of the Georgia Arbitration Code, O.C.G.A. § 9-9-1, *et seq.*, on federal grounds, (Brief Of Respondents, p. 10), Petitioners in fact argued before the Supreme Court of Georgia that "substantial justice can be served by ruling that the FAA applies, as Appellants [Respondents here] have always insisted." (Petitioners' Lodging, L-121).

Petitioners repeatedly argued this point because Respondents had presented affidavit evidence before the trial court demonstrating the presence of interstate commerce in the underlying contractual transaction. (Affidavit of Thomas Traylor, Petitioners' Lodging, L-30). This evidence, Respondents maintained, demonstrated why the FAA applied in this case. Relying as they were on "manifest disregard of the law" as the operative principle supporting their appeal, Petitioners repeatedly asserted the principle's validity on federal grounds.

For Respondents to suggest that Petitioners did not draw into question the applicability and validity of "manifest disregard of the law" on federal grounds is simply incorrect.

CONCLUSION

For all the reasons noted, Petitioners respectfully request that the Court grant Petitioners' Petition for Writ of Certiorari.

Dated: March 20, 2003

Respectfully submitted,

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